

Certified Copy

IN THE UNITED STATES COURT
DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

ERIC KELLEY,

Plaintiff(s),

vs.

CIVIL ACTION FILE NO. 4:10-cv-
01420-TLW-TER

UNITED PARCEL SERVICE, INC.,

Defendant(s).
~~~~~

**DEPOSITION OF**

**ERIC KELLEY**

September 30, 2011  
9:15 a.m.

15th Floor  
1180 West Peachtree Street, NW  
Atlanta, Georgia

Blanche J. Dugas, RPR, CCR No. B-2290



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Eric Kelley

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1 Q. Is that in Lawrenceville?

2 A. No, it's not in Lawrenceville. It's closer  
3 to Duluth.

4 Q. And what type of position were you  
5 interested in?

6 A. There again, like forklift, warehouse work.

7 Q. And have you reapplied or have you talked  
8 to them again after getting your Social Security card?

9 A. Okay. I just recently got it, so I haven't  
10 been back.

11 Q. Have there been any other companies or  
12 organizations that you spoke with about possible work?

13 A. No.

14 Q. Now, the last time we were together, we  
15 spent some time talking about the different actions  
16 that you believe UPS took against you because of your  
17 race as asserted in the lawsuit. Do you remember  
18 that?

19 A. I do.

20 Q. And as part of that exercise, I asked you  
21 to, you know, give me the list of the things that UPS  
22 did that you contend were discriminatory, and then we  
23 talked about each one. And the list as I have it from  
24 re-reading the deposition was your disqualification  
25 based on the road test in 2005, a subsequent



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1 disqualification for full-time driving that was either  
2 in 2006 or 2007 -- we couldn't remember which one --  
3 another disqualification in 2008, and then your  
4 discharge in January of 2009. Does that sound right?

5 A. That sounds right.

6 Q. Are there any other -- now, that was the  
7 list at the time, but sitting here today, are there  
8 any other actions that UPS took against you that you  
9 contend were based on race? And I want to distinguish  
10 that.

11 We talked -- you know, the exercise last  
12 time that I think is the best way to approach this is  
13 for you to list it out, and then we talked about each  
14 one and said why is it that you felt that this was  
15 discriminatory.

16 A. Exactly.

17 Q. So I'd like to do the same thing now. I  
18 just want to make sure we have the same list. We got  
19 through three of those things last time. I want to  
20 talk about your discharge, but before we talk about  
21 your discharge specifically, I want to make sure. Is  
22 that list of the four -- is that everything?

23 A. I think there was one that we talked about  
24 where David Brandon fired me for not citing the --

25 Q. The ten-point safety commentary?



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1 A. Exactly.

2 Q. I think we established --

3 MR. BABB: I just want to put an  
4 objection on the record about what was in  
5 or not in the previous deposition. I think  
6 the deposition will speak for itself.

7 MR. GARTLAND: Fair enough.

8 Q. (By Mr. Gartland) We did have some  
9 discussion that I remember about David Brandon and an  
10 instance in which he requested that you recite the  
11 ten-point commentary. You were not ultimately  
12 discharged as a result of the failure to recite all of  
13 the ten-point commentary, were you?

14 A. Right. I was taken off the road.

15 Q. You were taken off the road for how long?  
16 And again, I'm not trying to trick you, but I believe  
17 your testimony previously --

18 A. For that week.

19 Q. For the next Saturday, you didn't drive.

20 A. Well, I wasn't -- right. But I wasn't  
21 allowed to drive until I had to get my union rep  
22 involved.

23 Q. And Kelsey Cullum, the business manager;  
24 correct? Again, the record will speak for itself, but  
25 my recollection is that you testify you spoke with



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1 Kelsey and Kelsey interviewed you on your behalf.

2 A. That's correct.

3 Q. And at that time, you were doing both  
4 inside work and driving?

5 A. Right.

6 Q. Inside work during the week and driving on  
7 Saturdays?

8 A. Correct.

9 Q. Primarily?

10 A. Correct.

11 Q. And so you did continue to work inside  
12 during that time period; correct?

13 A. Right.

14 Q. You were just not allowed to drive for that  
15 one Saturday.

16 A. Right.

17 Q. So we can add that to the list of actions  
18 you believe UPS took against you?

19 A. If there was opportunities that would have  
20 came up during that week, I wouldn't have been able to  
21 drive.

22 Q. So before we talk about your discharge and  
23 why you believe that was discriminatory, are there any  
24 other actions you want to add to that list?

25 A. Right now, that's all I can think of.



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1 Q. All right. Are there any documents that  
2 you need to review in order to refresh your  
3 recollection as to other events? And the reason I say  
4 that is, again, this is our last time to be together  
5 and to have testimony.

6 A. I presented them all. Whatever.

7 Q. Okay.

8 A. That I know of that I have.

9 Q. All right. Let's talk about your discharge  
10 then. You allege that you were discharged because of  
11 your race; is that correct?

12 A. That's correct.

13 Q. And tell me why it is, every fact that you  
14 believe shows that UPS discharged you because of your  
15 race.

16 A. Okay. Because I was terminated and the  
17 white guy wasn't terminated.

18 Q. And who was this white guy?

19 A. Jamie. Jamie McDonald.

20 Q. Mr. McDonald is another employee at the  
21 Florence center?

22 A. Yes.

23 Q. Do you know what position Mr. McDonald  
24 served in at the time of your discharge?

25 A. Yes. He was a 22.3 driver.



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1 Q. And what did his 22.3 combination job  
2 consist of?

3 A. I couldn't actually tell you. I just know  
4 that's a position for -- a driver's position.

5 Q. What did Mr. McDonald, to the best of your  
6 knowledge, do during the week?

7 A. I believe they worked inside the building  
8 half of the time and then the other half, I think they  
9 drive Air.

10 Q. And do you recall what type of Air driving  
11 Mr. McDonald did around the time of your discharge?

12 A. Yes, deliver Air packages.

13 Q. From the center to the local area?

14 A. Exactly.

15 Q. And did Mr. McDonald typically work on  
16 Saturdays?

17 A. Yes.

18 Q. And what was he doing during Saturdays, if  
19 you know?

20 A. What was he doing? Driving Air.

21 Q. So you indicated that it's your belief that  
22 Mr. McDonald was asked to do the same thing as you; is  
23 that correct?

24 A. That's correct.

25 Q. Tell me more about that.



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1 A. For one thing, it's the job that -- which  
2 is a shuttle, taking Air to Columbia. It's the 22.3  
3 guy's job to do that. It's a full-time position job  
4 and I'm a part time.

5 Q. Isn't it the job of whoever is qualified to  
6 do Air driving and the manager asked them to do the  
7 job?

8 A. No.

9 MR. BABB: Object to the form of the  
10 question. You may answer.

11 THE WITNESS: No, it's where in my  
12 position being a part-timer, I have to wait  
13 until the 22.3 guys turn the job down in  
14 order to get an opportunity to do it.

15 Q. (By Mr. Gartland) Even on a Saturday?

16 A. Yes.

17 Q. Now, how often on Saturday would you do the  
18 shuttle run?

19 A. Whenever. Whenever I'd get an opportunity.  
20 Just like that. You know, I have to wait for some of  
21 the 22.3 guys to turn it down.

22 Q. Now, what -- you make the statement that --  
23 and I don't want to put words in your mouth, that the  
24 22.3 drivers have to be offered the shuttle run before  
25 you; is that correct?



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1 A. It's their job, yes.

2 Q. What is that statement based on? Is that  
3 something in the collective bargaining agreement?

4 A. I couldn't tell you, but that's what they  
5 told me.

6 Q. Who's they? I'm sorry to interrupt you,  
7 but who's they?

8 A. Management. Because we have asked that  
9 question before. You know, I've tried to be the one  
10 that would take the Air and the 22 point guys will --  
11 they complained and were saying that that was their  
12 job.

13 Q. That they should be given that opportunity  
14 first?

15 A. Exactly. And that's what they told me,  
16 that it was their job and that I couldn't take it  
17 unless one of them turned it down.

18 Q. But they have the option to turn it down;  
19 is that correct?

20 A. With that, unless -- you know, let's say if  
21 they couldn't get a part-timer to do it, then it would  
22 go back to them and one of them would have to take it.

23 Q. So there were some cases in which a 22.3  
24 driver was told you have to do this?

25 A. Correct.



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1 Q. And were you also told that you were being  
2 disqualified for sheeting up different stops as --  
3 eight different stops as closed within an 11-minute  
4 period?

5 A. That was one of the issues they brought up.

6 Q. That -- sorry. Go ahead.

7 A. Yes, that was one of the issues that they  
8 brought up.

9 Q. And also that you had sheeted a different  
10 package, a commercial stop, as not ready one at 1910,  
11 just one minute prior to returning to the building?  
12 Was that also one of the issues that was discussed?

13 A. Okay. Right, I remember that. That's  
14 where -- that was where the package was sheeted up,  
15 but it was a dark color box and I couldn't tell  
16 whether I had put my -- what we call the cross on it  
17 where you date it. The information that you put on  
18 it. And I looked all over to try to see where I  
19 marked it and I didn't, couldn't see that, but it was  
20 on there and I scanned it again to make sure that I  
21 had that package scanned in my board.

22 Q. Prior to returning to the center?

23 A. Correct. But at the same time, about  
24 having sheeted up so close within minutes that he's  
25 talking about, you know, UPS, they would tell the



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1 drivers to do this. This was where the lady -- white  
2 lady sheeted up packages in less than -- I think it  
3 was like six or seven packages in less than a minute  
4 or maybe --

5 Q. That was the one we discussed during the  
6 previous portion of your deposition?

7 A. Exactly.

8 Q. Where you had looked at her delivery  
9 records?

10 A. Right.

11 MR. GARTLAND: I don't have any  
12 further questions, Jay.

13 MR. BABB: Give me a moment. Let me  
14 see if I have any.

15 No questions.

16 (Deposition concluded at 11:16 a.m.)  
17  
18  
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# Local No. 71 COMPLAINT FORM

P.O. BOX 560248 • CHARLOTTE, N.C. 28256 • PHONE (704)596-2475



DATE: 5-25-05

NAME: Eric Kelley

CLASSIFICATION: Local Sort

ADDRESS: 1618 Willis Dr.

SENIORITY DATE: 7-31-96

CITY and STATE: Hartsville S.C.

TYPE OF COMPLAINT: unfair treatment

(843) PHONE: 857-3695

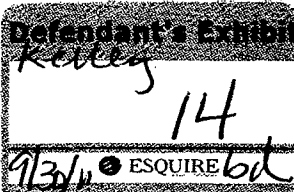
ARTICLE VIOLATED: \_\_\_\_\_

EMPLOYED BY: URS

HANDLED BY: STEWARD/AGENT Ed Mulligan

DETAILS INVOLVED: \_\_\_\_\_

On 5-21-05 I was disqualified from driving school on a road test I didn't have to take according to HR (Mike Bookman) but was force to take by management (David). I think this was wrong and therefore this decision should be over turn and that I be able to attend school.



Eric Kelley  
5-25-05

DATE AND RESULTS OF LOCAL HEARING: 6/2/05

Withdrawn - no contract violation -

I HEREBY AUTHORIZE TEAMSTERS LOCAL NO. 71 TO REPRESENT ME ON MY COMPLAINT AND I SHALL ABIDE BY ANY DECISION RENDERED.

UPS-000022



Local 71

# COMPLAINT FORM

PO Box 560248 • Charlotte, NC 28256 • Phone: 704-596-2475

Date 8/29/06Name Eric Kelley

Classification \_\_\_\_\_

Address 1618 Willis Dr.Seniority Date 7-31-1996City/State/Zip Hartsville S.C. 29550Type of Complaint Unjust disqualificationPhone 843-857-3695Article Violated 30, 48, 50 disrespect treatmentEmployed By UPS

Handled By: Steward/Agent \_\_\_\_\_

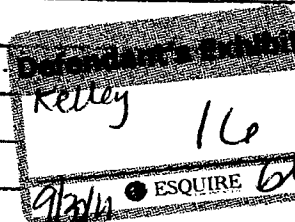
## Details Involved:

at No  
In March I was disqualify from a driver position  
for 12 miss scan packages. I feel this was unjust because  
this was not cause by my negligence, but they were other factors  
that lead up to this. Sense I been disqualify there has been  
more factor. that happen. So I'm asking to be reinstated and  
paid for my lost wages

Eric Kelley  
8-29-06

## Remedy:

Date and results of Local hearing:



~~I hereby authorize Teamsters Local 71 to represent me on my complaint and I shall abide by any decision rendered.~~

Signature of member filing complaint \_\_\_\_\_

UPS-000020